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OFFICE OF PETITIONS

In re Application of :
Bennie L. Farmer :
Application No. 10/825,967 : DECISION ON PETITION
Filed: April 16, 2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 116897-29 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 10, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain references to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed applications to this application, are required.

Relative to the priority claim to application 09/638,177, application 09/638,177 is noted as being abandoned on July 21, 2003, yet application 10/690,459, which claimed that benefit of application 09/638,177 was not filed until October 20, 2003. A review of the file record for application 09/638,177 revealed that a non-final rejection was mailed on April 18, 2003, allowing a shortened statutory period for reply of three months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). On October 22, 2003 (certificate of mailing date October 20, 2003), a "Conditional Petition and Fee for Extension of Time in Parent Case that is to be Abandoned when Filing New Application Claiming Its Benefit" which authorized deposit account 15-0450 to be charged for an necessary extension of time to establish co-pendency between application 09/638,177 and application 10/690,459. It does not appear that the fee for the extension of time within the third month that is necessary to establish co-pendency between application 09/638,177 and application 10/690,459 was ever charged to deposit account 15-0450. Accordingly, deposit account 15-0450 will be charged \$475.00 for the extension of time within the third month making the date of abandonment for application 09/638,177 October 19, 2003, and establishing co-pendency between application 09/638,177 and 10/690,459.

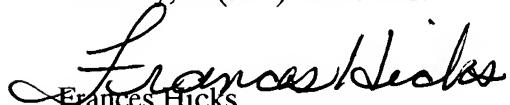
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Any questions concerning this matter may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.


Frances Hicks

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